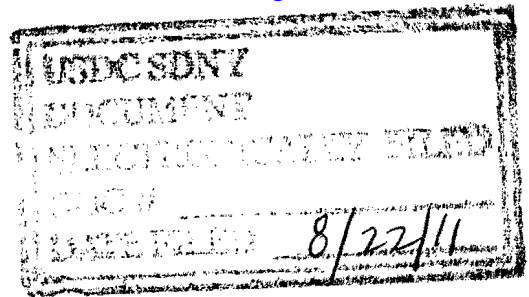


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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FIDELITY INFORMATION SERVICES, INC., :

Plaintiff, :

-against- :

DEBTDOMAIN GLMS PTE LTD., :

DEBTDOMAIN (USA) INC., DAVID LEVY :

and SETH ROTHMAN, :

Defendants. :

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KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE

ORDER

09 Civ. 7589 (LAK)(KNF)

A telephonic conference was held with counsel to the respective parties on August 18, 2011, to address two motions: i) the defendants' motion for sanctions against the plaintiff for failing to attend its own deposition; and ii) the plaintiff's cross-motion for sanctions against the defendants, based upon their failure to produce Gary Viener for a deposition in accordance with an order of the Court. This order memorializes the determinations communicated to the parties orally, during the conference, regarding the two motions.

For the reasons explained during the conference, the defendants' motion for sanctions is granted, and the plaintiff shall pay to the defendants the reasonable expenses, including attorney's fees, the defendants incurred by virtue of the plaintiff's failure to attend its own deposition. The defendants shall, on or before August 29, 2011, serve and file competent evidence, via affidavit or otherwise, of the reasonable expenses, including attorney's fees, they incurred owing to the plaintiff's failure to attend its deposition. On or before September 12,

2011, the plaintiff shall serve and file any challenge to the reasonableness of the expenses and attorney's fees claimed by the defendants; and on or before September 19, 2011, the defendants shall serve and file any reply.

For the reasons explained during the conference, the plaintiff's cross-motion for sanctions is granted. The defendants are precluded from offering the testimony of Mr. Viener as evidence in support of any motion made or any hearing or trial held in connection with this action. Should the assigned district judge determine not to adopt the recommendation made by the Court on the motion for summary judgment, made by the defendants, then the Court will inform the assigned district judge that an instruction should be given at the trial that the jury must infer that Mr. Viener's testimony, as to the work he did respecting the redesign of the defendants' "Notes Screen" or "Notes Page," would have been adverse to the defendants.

During the conference, the plaintiff requested that the Court award it the reasonable expenses, including attorney's fees, associated with the defendants' failure to produce Mr. Viener for his deposition, as ordered by the Court. The Court reserved decision on the application, after entertaining argument on it. The Court has determined that it is appropriate to grant the application in light of the mandatory language in Fed. R. Civ. P. 37(b)(2)(C). Therefore, on or before August 29, 2011, the plaintiff shall serve and file competent evidence, via affidavit or otherwise, of the reasonable expenses, including attorney's fees, it incurred as a result of defendants' failure to produce Mr. Viener for his deposition. On or before September 12, 2011, the defendants shall serve and file any challenge to the reasonableness of the expenses and attorney's fees claimed by the plaintiff. On or before September 19, 2011, any reply shall be served and filed by the plaintiffs.

This order resolves the motion that appears at Docket Entry No. 111.

Dated: New York, New York
August 22, 2011

SO ORDERED:



KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE